

Introduced by Senator Perata

February 20, 2003

An act to amend Section 12280 of the Penal Code, relating to assault weapons.

LEGISLATIVE COUNSEL'S DIGEST

SB 601, as introduced, Perata. Assault weapons.

Existing law generally regulates assault weapons.

This bill would make a technical, nonsubstantive change to those provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 12280 of the Penal Code is amended to
2 read:

3 12280. (a) (1) ~~Any~~ Every person who, within this state,
4 manufactures or causes to be manufactured, distributes,
5 transports, or imports into the state, keeps for sale, or offers or
6 exposes for sale, or who gives or lends any assault weapon, except
7 as provided by this chapter, is guilty of a felony, and upon
8 conviction shall be punished by imprisonment in the state prison
9 for four, six, or eight years.

10 (2) In addition and consecutive to the punishment imposed
11 under paragraph (1), any person who transfers, lends, sells, or
12 gives any assault weapon to a minor in violation of paragraph (1)
13 shall receive an enhancement of one year.



1 (b) Except as provided in Section 12288, and in subdivisions
2 (c) and (d), any person who, within this state, possesses any assault
3 weapon, except as provided in this chapter, is guilty of a public
4 offense and upon conviction shall be punished by imprisonment in
5 the state prison, or in a county jail, not exceeding one year.
6 However, if the person presents proof that he or she lawfully
7 possessed the assault weapon prior to June 1, 1989, or prior to the
8 date it was specified as an assault weapon, and has since either
9 registered the firearm and any other lawfully obtained firearm
10 specified by Section 12276 or 12276.5 pursuant to Section 12285
11 or relinquished them pursuant to Section 12288, a first-time
12 violation of this subdivision shall be an infraction punishable by
13 a fine of up to five hundred dollars (\$500), but not less than three
14 hundred fifty dollars (\$350), if the person has otherwise possessed
15 the firearm in compliance with subdivision (c) of Section 12285.
16 In these cases, the firearm shall be returned unless the court finds
17 in the interest of public safety, after notice and hearing, that the
18 assault weapon should be destroyed pursuant to Section 12028.

19 (c) A first-time violation of subdivision (b) shall be an
20 infraction punishable by a fine of up to five hundred dollars
21 (\$500), if the person was found in possession of no more than two
22 firearms in compliance with subdivision (c) of Section 12285 and
23 the person meets all of the following conditions:

24 (1) The person proves that he or she lawfully possessed the
25 assault weapon prior to the date it was defined as an assault weapon
26 pursuant to Section 12276.1.

27 (2) The person is not found in possession of a firearm specified
28 as an assault weapon pursuant to Section 12276 or Section
29 12276.5.

30 (3) The person has not previously been convicted of violating
31 this section.

32 (4) The person was found to be in possession of the assault
33 weapons within one year following the end of the one-year
34 registration period established pursuant to subdivision (a) of
35 Section 12285.

36 (5) The person has since registered the firearms and any other
37 lawfully obtained firearms defined by Section 12276.1, pursuant
38 to Section 12285, except as provided for by this section, or
39 relinquished them pursuant to Section 12288.



1 (d) Firearms seized pursuant to subdivision (c) shall be
2 returned unless the court finds in the interest of public safety, after
3 notice and hearing, that the assault weapon should be destroyed
4 pursuant to Section 12028.

5 (e) Notwithstanding Section 654 or any other provision of law,
6 any person who commits another crime while violating this section
7 may receive an additional, consecutive punishment of one year for
8 violating this section in addition and consecutive to the
9 punishment, including enhancements, which is prescribed for the
10 other crime.

11 (f) Subdivisions (a) and (b) shall not apply to the sale to,
12 purchase by, or possession of assault weapons by the Department
13 of Justice, police departments, sheriffs' offices, marshals' offices,
14 the Youth and Adult Corrections Agency, the Department of the
15 California Highway Patrol, district attorneys' offices, Department
16 of Fish and Game, Department of Parks and Recreation, or the
17 military or naval forces of this state or of the United States, or any
18 federal law enforcement agency for use in the discharge of their
19 official duties.

20 (g) (1) Subdivision (b) shall not prohibit the possession or use
21 of assault weapons by sworn peace officer members of those
22 agencies specified in subdivision (f) for law enforcement
23 purposes, whether on or off duty.

24 (2) Subdivisions (a) and (b) shall not prohibit the delivery,
25 transfer, or sale of an assault weapon to, or the possession of an
26 assault weapon by, a sworn peace officer member of an agency
27 specified in subdivision (f), provided that the peace officer is
28 authorized by his or her employer to possess or receive the assault
29 weapon. Required authorization is defined as verifiable written
30 certification from the head of the agency, identifying the recipient
31 or possessor of the assault weapon as a peace officer and
32 authorizing him or her to receive or possess the specific assault
33 weapon. For this exemption to apply, in the case of a peace officer
34 who possesses or receives the assault weapon prior to January 1,
35 2002, the officer shall register the assault weapon pursuant to
36 Section 12285 on or before April 1, 2002; in the case of a peace
37 officer who possesses or receives the assault weapon on or after
38 January 1, 2002, the officer shall register the assault weapon
39 pursuant to Section 12285 not later than 90 days after possession

1 or receipt. The peace officer must include with the registration, a
2 copy of the authorization required pursuant to this paragraph.

3 (3) Nothing in this section shall be construed to limit or prohibit
4 the delivery, transfer, or sale of an assault weapon to, or the
5 possession of an assault weapon by, a member of a federal law
6 enforcement agency provided that person is authorized by the
7 employing agency to possess the assault weapon.

8 (h) Subdivisions (a) and (b) shall not prohibit the sale or
9 transfer of assault weapons by an entity specified in subdivision (f)
10 to a person, upon retirement, who retired as a sworn officer from
11 that entity.

12 (i) Subdivision (b) shall not apply to the possession of an
13 assault weapon by a retired peace officer who received that assault
14 weapon pursuant to subdivision (h).

15 (j) Subdivision (b) shall not apply to the possession of an
16 assault weapon, as defined in Section 12276, by any person during
17 the 1990 calendar year, during the 90-day period immediately after
18 the date it was specified as an assault weapon pursuant to Section
19 12276.5, or during the one-year period after the date it was defined
20 as an assault weapon pursuant to Section 12276.1, if all of the
21 following are applicable:

22 (1) The person is eligible under this chapter to register the
23 particular assault weapon.

24 (2) The person lawfully possessed the particular assault
25 weapon described in paragraph (1) prior to June 1, 1989, if the
26 weapon is specified as an assault weapon pursuant to Section
27 12276, or prior to the date it was specified as an assault weapon
28 pursuant to Section 12276.5, or prior to the date it was defined as
29 an assault weapon pursuant to Section 12276.1.

30 (3) The person is otherwise in compliance with this chapter.

31 (k) Subdivisions (a) and (b) shall not apply to the manufacture
32 by persons who are issued permits pursuant to Section 12287 of
33 assault weapons for sale to the following:

34 (1) Exempt entities listed in subdivision (f).

35 (2) Entities and persons who have been issued permits pursuant
36 to Section 12286.

37 (3) Entities outside the state who have, in effect, a federal
38 firearms dealer's license solely for the purpose of distribution to
39 an entity listed in paragraphs (4) to (6), inclusive.

40 (4) Federal military and law enforcement agencies.

1 (5) Law enforcement and military agencies of other states.

2 (6) Foreign governments and agencies approved by the United
3 States State Department.

4 (l) Subdivision (a) shall not apply to a person who is the
5 executor or administrator of an estate that includes an assault
6 weapon registered under Section 12285 or that was possessed
7 pursuant to subdivision (g) or (i) which is disposed of as authorized
8 by the probate court, if the disposition is otherwise permitted by
9 this chapter.

10 (m) Subdivision (b) shall not apply to a person who is the
11 executor or administrator of an estate that includes an assault
12 weapon registered under Section 12285 or that was possessed
13 pursuant to subdivision (g) or (i), if the assault weapon is possessed
14 at a place set forth in paragraph (1) of subdivision (c) of Section
15 12285 or as authorized by the probate court.

16 (n) Subdivision (a) shall not apply to:

17 (1) A person who lawfully possesses and has registered an
18 assault weapon pursuant to this chapter, or who lawfully possesses
19 an assault weapon pursuant to subdivision (i), who lends that
20 assault weapon to another if all the following apply:

21 (A) The person to whom the assault weapon is lent is 18 years
22 of age or over and is not in a class of persons prohibited from
23 possessing firearms by virtue of Section 12021 or 12021.1 of this
24 code or Section 8100 or 8103 of the Welfare and Institutions Code.

25 (B) The person to whom the assault weapon is lent remains in
26 the presence of the registered possessor of the assault weapon, or
27 the person who lawfully possesses an assault weapon pursuant to
28 subdivision (i).

29 (C) The assault weapon is possessed at any of the following
30 locations:

31 (i) While on a target range that holds a regulatory or business
32 license for the purpose of practicing shooting at that target range.

33 (ii) While on the premises of a target range of a public or private
34 club or organization organized for the purpose of practicing
35 shooting at targets.

36 (iii) While attending any exhibition, display, or educational
37 project that is about firearms and that is sponsored by, conducted
38 under the auspices of, or approved by a law enforcement agency
39 or a nationally or state recognized entity that fosters proficiency
40 in, or promotes education about, firearms.

(2) The return of an assault weapon to the registered possessor, or the lawful possessor, which is lent by the same pursuant to paragraph (1).

(o) Subdivision (b) shall not apply to the possession of an assault weapon by a person to whom an assault weapon is lent pursuant to subdivision (n).

(p) Subdivisions (a) and (b) shall not apply to the possession and importation of an assault weapon into this state by a nonresident if all of the following conditions are met:

(1) The person is attending or going directly to or coming directly from an organized competitive match or league competition that involves the use of an assault weapon.

(2) The competition or match is conducted on the premises of one of the following:

(i) A target range that holds a regulatory or business license for the purpose of practicing shooting at that target range.

(ii) A target range of a public or private club or organization that is organized for the purpose of practicing shooting at targets.

(3) The match or competition is sponsored by, conducted under the auspices of, or approved by, a law enforcement agency or a nationally or state recognized entity that fosters proficiency in, or promotes education about, firearms.

(4) The assault weapon is transported in accordance with Section 12026.1 or 12026.2.

(5) The person is 18 years of age or over and is not in a class of persons prohibited from possessing firearms by virtue of Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(q) Subdivision (b) shall not apply to any of the following persons:

(1) A person acting in accordance with Section 12286.

(2) A person who has a permit to possess an assault weapon issued pursuant to Section 12286 when he or she is acting in accordance with Section 12285 or 12286.

(r) Subdivisions (a) and (b) shall not apply to any of the following persons:

(1) A person acting in accordance with Section 12285.

(2) A person acting in accordance with Section 12286 or 12290.

1 (s) Subdivision (b) shall not apply to the registered owner of an
2 assault weapon possessing that firearm in accordance with
3 subdivision (c) of Section 12285.

4 (t) Subdivision (a) shall not apply to the importation into this
5 state of an assault weapon by the registered owner of that assault
6 weapon, if it is in accordance with the provisions of subdivision
7 (c) of Section 12285.

8 (u) As used in this chapter, the date a firearm is an assault
9 weapon is the earliest of the following:

10 (1) The effective date of an amendment to Section 12276 that
11 adds the designation of the specified firearm.

12 (2) The effective date of the list promulgated pursuant to
13 Section 12276.5 that adds or changes the designation of the
14 specified firearm.

15 (3) The operative date of Section 12276.1, as specified in
16 subdivision (d) of that section.

